

AMENDED IN SENATE JULY 9, 1996
AMENDED IN SENATE JUNE 26, 1996
AMENDED IN ASSEMBLY JANUARY 11, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 1651

Introduced by Assembly Member Richter

February 24, 1995

An act to amend ~~Section~~ *Sections 25187.2 and 25360* of, to add Section 25360.1 to, ~~and to add Article 4.5 (commencing with Section 25346) to Chapter 6.8 of Division 20 to add Chapter 6.66 (commencing with Section 25269) to Division 20 of, and to repeal Section 25206~~ of, the Health and Safety Code, relating to hazardous substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 1651, as amended, Richter. Hazardous substances: oversight: cost recovery.

Existing law, the Carpenter-Presley-Tanner Hazardous Substance Account Act, authorizes the Department of Toxic Substances Control to expend the money in the Hazardous Waste Control Account in the General Fund, upon appropriation by the Legislature, to pay for, among other things, removal and remedial actions related to the release of hazardous substances. Existing law authorizes the Attorney General to recover from the liable person, as defined, the costs incurred and payable from the account or the Hazardous Substance Cleanup Fund for a removal or remedial action to

a hazardous substance release. Under existing law, the amount of any costs which may be recovered under those provisions for a remedial or removal action paid from the Hazardous Substance Cleanup Fund is required to include the amount paid from that fund and interest on that amount calculated at a rate equal to the interest rate of the bonds sold pursuant to the Hazardous Substance Cleanup Bond Act of 1984. Existing law also imposes liability upon those liable persons for administrative costs in an amount equal to 10% of the reasonable cost actually incurred, or \$500, whichever is greater. Existing law requires the State Board of Equalization to assess a fee of \$8,000 upon a potentially responsible party for oversight of a preliminary endangerment assessment by the department.

This bill would make a statement of legislative intent, would define terms, and would require the department to develop a concise statement of its cost recovery policies and billing procedures, including dispute resolution procedures and availability of program guidance and policies, and distribute *the statement* to all responsible parties. The bill would require the department to *comply with the bill's oversight cost recovery requirements when recovering costs for corrective action pursuant to the hazardous waste control laws, for removal and remedial actions pursuant to the Carpenter-Presley-Tanner Hazardous Substance Account Act, and for response costs pursuant to the California Expedited Remedial Action Reform Act of 1994.* The bill would require the department to take specified actions to improve the tracking of indirect oversight costs, as defined, to establish rates for indirect oversight costs which are specific to ~~the~~ each program and to review the department's cost recovery policies at least once every 2 years. The bill would also require the department to adopt specified procedures with regard to parties performing hazardous substance release site investigations and cleanups *or taking a corrective action or response action*, including a meet and confer process, to adopt a billing system, as prescribed, for oversight costs, and to take specified actions with regard to uncollectible accounts.



The department would be required to submit a report to the Legislature, by June 1, 1998, regarding the implementation of those requirements.

The bill would instead provide that the amount of any remedial or removal action costs that may be recovered for a remedial or removal action paid from the Hazardous Substance Cleanup Fund includes interest on any amount paid from the fund calculated at a rate equal to the interest rate of the bonds sold pursuant to the bond act and that the interest on any amount paid from the state account or the Site Remediation Account shall be calculated at the rate of return earned on investment in the Surplus Money Investment Fund. The bill would also subject any monetary obligation to the department pursuant to the hazardous waste control laws or the hazardous substance account act to interest from the date of the demand at the same rate of return earned on investment in the Surplus Money Investment Fund. The bill would delete the provision specifying the liability for administrative costs.

The bill would delete obsolete provisions and would make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Article 4.5 (commencing with Section~~
2 ~~25346) is added to Chapter 6.8 of Division 20 of the Health~~
3 ~~and Safety Code, to read:~~

4
5 ~~Article 4.5. Department Oversight Costs~~

6
7 ~~25346.—~~

8 *SECTION 1. Section 25187.2 of the Health and Safety*
9 *Code is amended to read:*

10 25187.2. If a removal or remedial action order issued
11 pursuant to Section 25187 to a potentially responsible
12 party requires a person to take corrective action with
13 respect to hazardous waste, that person shall pay ~~the~~
14 ~~applicable fees specified in Section 25343~~ for oversight of

1 the removal or remedial action. However,
2 notwithstanding subdivision (a) of Section 25343, any fees
3 collected pursuant to this section shall be deposited in the
4 Hazardous Waste Control Account, unless the person is
5 required to take the same removal or remedial action
6 pursuant to Section 25355.5 or an order issued pursuant to
7 subdivision (a) of Section 25358.3. This section does not
8 prohibit the department or unified program agency from
9 assessing any other penalty or recovering any costs for
10 oversight of a removal or remedial action, pursuant to any
11 other provision, except that any fees paid pursuant to this
12 section shall be credited for those costs. Nothing in this
13 section limits the due process requirements of Section
14 25187.

15 *SEC. 2. Section 25206 of the Health and Safety Code*
16 *is repealed.*

17 ~~25206. (a) On or before July 1, 1993, the department~~
18 ~~shall submit to the Legislature and the public a plan to~~
19 ~~change the system of fees assessed by the department~~
20 ~~pursuant to Sections 25205.7 and 25343. After receiving~~
21 ~~comments from the public, the department shall revise,~~
22 ~~adopt, and implement the plan on or before December~~
23 ~~31, 1993. In adopting and implementing this plan, the~~
24 ~~department is not subject to the requirements of Sections~~
25 ~~25205.7 and 25343, except that the plan shall not result in~~
26 ~~any facility or person paying more than the amount the~~
27 ~~facility or person is otherwise required to pay under~~
28 ~~Sections 25205.7 and 25343.~~

29 ~~(b) The plan adopted by the department pursuant to~~
30 ~~this section shall be designed to do all of the following~~
31 ~~with regard to the system of fees assessed by the~~
32 ~~department pursuant to Sections 25205.7 and 25343:~~

33 ~~(1) Provide accurate time accounting.~~

34 ~~(2) Provide accurate invoicing based upon hourly~~
35 ~~rates comparable to private sector professional~~
36 ~~classifications and comparable to rates charged by other~~
37 ~~states for comparable services. These rates should be~~
38 ~~applied against the time spent by the actual individuals~~
39 ~~who perform the work.~~

1 ~~(3) Establish work standards that address work tasks,~~
2 ~~timing, completeness, limits on redirection of effort, and~~
3 ~~limits on the time spent in the aggregate for each activity.~~

4 ~~(4) Establish overhead charge back limitations that~~
5 ~~reasonably relate to the performance of the function.~~

6 ~~(5) Establish a task-oriented payment system that lays~~
7 ~~out milestones required for progress billing and payment~~
8 ~~and appropriate criteria for downpayments or advanced~~
9 ~~payments, including a procedure for ending the review~~
10 ~~process.~~

11 ~~(6) Provide appropriate invoice controls, including a~~
12 ~~dispute resolution procedure providing for independent~~
13 ~~review by an administrative law judge.~~

14 ~~(c) If the department determines that the~~
15 ~~implementation of a plan which meets the criteria~~
16 ~~specified in subdivision (b) will prevent the department~~
17 ~~from being able to recover the full costs of conducting the~~
18 ~~activities for which the fees are assessed, the department~~
19 ~~shall promptly notify the Legislature, and make~~
20 ~~recommendations concerning increases in the maximum~~
21 ~~amounts which could be assessed for each activity listed~~
22 ~~in Sections 25205.7 and 25343.~~

23 *SEC. 3. Chapter 6.66 (commencing with Section*
24 *25269) is added to Division 20 of the Health and Safety*
25 *Code, to read:*

26
27 *CHAPTER 6.66. OVERSIGHT COSTS*
28

29 25269. The Legislature hereby finds and declares all
30 of the following:

31 (a) To enhance cooperation between the department
32 and the regulated community, and to reduce the state's
33 costs associated with the oversight of cleanup efforts, the
34 costs of the associated cost recovery program and the
35 corresponding costs to the responsible parties involved,
36 the oversight program should be administered in an
37 efficient, responsible, and accountable manner.

38 (b) According to information provided to the
39 Legislature, the department has collected more than
40 seventy-one million dollars (\$71,000,000) since the cost

1 recovery effort was begun in the early 1980s and there is
2 approximately seventy million dollars (\$70,000,000) to
3 eighty million dollars (\$80,000,000) in outstanding
4 receivables for disputed site cleanup oversight costs. The
5 information provided to the Legislature indicates that
6 potentially responsible parties have complained that the
7 department's oversight costs have been unpredictable,
8 unsubstantiated, and exceedingly high.

9 (c) Disputes with potentially responsible parties over
10 the reasonableness of oversight costs have been a major
11 factor in the difficulty that the department has
12 experienced in conducting cost recovery. Disputes of that
13 kind substantially increase the cost of state operations and
14 the cost of doing business for the private sector, leading
15 to extended negotiations and litigation. The redirection
16 of resources by both parties in attempting to resolve those
17 differences most likely inhibit cleanup efforts and affect
18 the ability of the parties to work together cooperatively,
19 thereby exacerbating the costs associated with the
20 cleanups. Disputes would be reduced by clarifying
21 current law by providing definitions of direct and indirect
22 oversight costs. Further, these high costs affect the
23 competitiveness of California businesses in national and
24 global business environments.

25 ~~25346.1.—~~

26 25269.1. For purposes of this article, the following
27 terms have the following meaning:

28 (a) "*Department*" means the *Department of Toxic*
29 *Substances Control*.

30 (b) "Direct oversight costs" means the costs to the
31 department of overseeing a cleanup action, *pursuant to*
32 *the authority specified in subdivision (a) of Section*
33 *25269.2*, that can be specifically attributed to a particular
34 cost objective, including, but not limited to, sites,
35 facilities, and activities.

36 ~~(b)—~~

37 (c) "Indirect oversight costs" means the costs to the
38 department of activity that is of a common or joint
39 purpose benefiting more than one cost objective and not
40 readily assignable to a single case objective.

~~(e)~~

(d) “Pro rata” means the general administrative costs expended by central service agencies to provide centralized services to state agencies, as defined in the State Administrative Manual.

~~25346.2.—~~

25269.2. (a) *The department shall comply with this chapter when recovering oversight costs for corrective action pursuant to Chapter 6.5 (commencing with Section 25100), for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300), and for response actions pursuant to Chapter 6.85 (commencing with Section 25396).*

(b) The department shall develop a concise statement of its cost recovery policies and billing procedures, including dispute resolution procedures and availability of program guidance and policies, and distribute the statement to all responsible parties.

~~25346.4.—~~

25269.3. The department shall take the following actions with regard to the tracking of indirect oversight costs:

(a) Ensure that pro rata costs are allocated appropriately to all departmental activities, so that the department’s program will only bear these pro rata costs in proportion to the benefits received by potentially responsible parties.

(b) Routinely include operating expenses in the indirect oversight costs and allocate those expenses using processes that ensure that the department’s program only bears indirect oversight costs in proportion to the benefits received by potentially responsible parties.

(c) Exclude, from indirect oversight costs, the costs of grant development and administration, fee administration, contract development and administration, and public and governmental inquiries.

~~25346.5.—~~

25269.4. (a) The department shall establish rates for indirect oversight costs that are specific to each program and shall review and update the indirect cost rates based

1 upon increases or decreases in the amounts of grants
2 received by the department, department
3 reorganizations, and other relevant factors, but not less
4 than once every six months, based upon the previous 12
5 months of expenditure data. The department shall apply
6 the indirect oversight cost rates prospectively and shall
7 not make retroactive adjustments in those rates.

8 (b) The department shall review the department's
9 cost recovery policies at least once every two years.

10 ~~25346.6.—~~

11 25269.5. The department shall take the following
12 actions with regard to the department's relationship with
13 the parties who are performing the investigation and
14 cleanup of the hazardous substance release ~~site~~: *site or*
15 *taking a hazardous waste corrective action or response*
16 *action*:

17 (a) Adopt procedures to improve communication,
18 facilitate the exchange of ideas, eliminate surprises, and
19 allow better financial planning by the department and
20 potentially responsible parties, including a meet and
21 confer process which includes, but is not limited to, all of
22 the following:

23 (1) An estimate of the cost of site remediation by the
24 department for the next phase of the site remediation
25 activity, including a list of estimated personnel labor
26 rates.

27 (2) An estimate of the total hours that the department
28 expects the department staff to incur in the next phase of
29 the site mitigation process, to the extent that the
30 department can project its time and costs in advance.
31 That estimate shall include the projected hours of the
32 project manager, and the costs of public participation,
33 legal counsel, and technical consultations.

34 (3) A discussion of the schedule for the remediation
35 action, including a thorough review of the services that
36 the department expects to provide, deliverables,
37 timeframes, expectations of both parties, a process for
38 status reporting by both parties, systematic billing at least
39 once every three months by the department, and an



1 agreement on how the work plan will be modified, and
2 how the costs will be estimated.

3 (b) Develop a concise statement of its cost recovery
4 policies and billing procedures, including dispute
5 resolution procedures and the availability of program
6 guidance and policies, which shall be distributed to all
7 potentially responsible parties before any site
8 remediation commences, as part of the meet and confer
9 process.

10 (c) Review all informal guidance documents for the
11 cost recovery program, including fee bulletins,
12 management memos, policies, and procedures, and
13 review and update those documents, as appropriate.

14 (d) Establish a procedure, when there is a change of
15 project manager for a remediation action, to provide for
16 a detailed status briefing to identify the highlights of past
17 work and identify the current areas of agreement and
18 disagreement among the parties.

19 ~~25346.7.—~~

20 25269.6. The department shall adopt a billing system
21 for oversight costs which meets all of the following
22 criteria:

23 (a) Invoices shall be issued within 60 days to the extent
24 practicable, with appropriate incentives for prompt
25 payment. In no event shall invoices be issued less
26 frequently than on a quarterly basis.

27 (b) Invoices shall be mailed to the correct person for
28 the potentially responsible party.

29 (c) Sufficient detail shall be included with each
30 invoice, so that the potentially responsible party can
31 relate the items on the invoice to the benefits received,
32 and additional details, including daily timesheet
33 personnel data, shall be made readily available.

34 (d) Invoices shall be supplemented with statements of
35 any changes in rates and a detailed justification for any
36 such changes.

37 (e) Invoices shall be reviewed for accuracy and
38 appropriateness by a member of the department staff
39 who has direct knowledge of the remediation action.

(f) Invoices shall be reasonably consistent with expectations regarding costs, benefits, and outcomes developed during the meet and confer process specified in subdivision (a) of Section ~~25346.6~~ 25269.5, if the department's knowledge of site conditions or other factors which may substantially impact the department's costs associated with the site, have not changed significantly since the last conference.

(g) A process for the timely review and settlement of any outstanding accounts shall be developed and implemented.

~~25346.8.—~~

25269.8. The department shall take all of the following actions with regard to uncollectible accounts:

(a) Review all current outstanding receivables and make an appropriate adjustment for estimated uncollectible amounts, consistent with current accounting practices and recognizing the present value of future collection. The department may, if warranted, write off or write down those receivable amounts.

(b) Maintain and report an analysis of outstanding receivables and other control analyses.

(c) Consider whether to enter into a contract with a private collection agency to collect substantially past-due accounts and, for longer term receivables, consider whether credit arrangements should be made with banks or other institutions willing to assist in financing a potentially responsible party's obligation for remediation.

~~25346.9.—~~

25269.9. On or before June 1, 1998, the department, in consultation with the Secretary for Environmental Protection, shall make available a written report regarding the implementation of the changes required by this article.

~~SEC. 2.—~~

SEC. 4. Section 25360 of the Health and Safety Code is amended to read:

25360. (a) Any costs incurred and payable from the state account, the Site Remediation Account, or the Hazardous Substance Cleanup Fund shall be recoverable

1 by the Attorney General, upon the request of the
2 department, from the liable person or persons. The
3 amount of any remedial or removal action costs that may
4 be recovered pursuant to this section shall include
5 interest on any amount paid from the Hazardous
6 Substance Cleanup Fund calculated at a rate equal to the
7 interest rate of the bonds sold pursuant to Article 7.5
8 (commencing with Section 25385) and interest on any
9 amount paid from the state account or the Site
10 Remediation Account, calculated at the rate of return
11 earned on investment in the Surplus Money Investment
12 Fund pursuant to Section 16475 of the Government Code.

13 (b) A person who is liable for costs incurred at a site,
14 which are payable from the state account, the Site
15 Remediation Account, or the Hazardous Substance
16 Cleanup Fund, shall have the liability reduced by any fee
17 pursuant to this chapter that was actually paid by that
18 person in connection with that site, including any fee paid
19 pursuant to Section 25343.

20 (c) The amount of cost determined pursuant to this
21 section shall be recoverable at the discretion of the
22 department, either in a separate action or by way of
23 intervention as of right in an action for contribution or
24 indemnity. Nothing in this section deprives a party of any
25 defense he or she may have.

26 (d) Moneys recovered by the Attorney General
27 pursuant to this section shall be deposited in the state
28 account, except that, if the costs incurred were paid from
29 the Hazardous Substance Cleanup Fund, the Attorney
30 General shall deposit the amounts recovered into the
31 Hazardous Substance Clearing Account. Moneys
32 deposited in the Hazardous Substance Clearing Account
33 pursuant to this section are available to pay the principal
34 of, and interest on, bonds sold pursuant to Article 7.5
35 (commencing with Section 25385).

36 ~~SEC. 3.—~~

37 *SEC. 5.* Section 25360.1 is added to the Health and
38 Safety Code, to read:

39 25360.1. Any monetary obligation to the department
40 pursuant to Chapter 6.5 (commencing with Section

1 25100) or this chapter shall be subject to interest from the
2 date of the demand at the same rate of return earned on
3 investment in the Surplus Money Investment Fund
4 pursuant to Section 16475 of the Government Code,
5 except the department may waive the interest if the
6 obligation is satisfied within 60 days from the date of
7 invoice.

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